# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 7028 of 2001**

**For Approval and Signature:**

**HON'BLE MR JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DIPENDRABHAI GORDHANDAS CHOKSI - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR AJ PATEL for Petitioner No(s).: 1.

MR PR ABICHANDANI, AGP, for Respondent No(s).: 1 & 2.

MR JASWANT K SHAH for Respondent No(s).: 3 - 3,3 - 3.

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**CORAM :HON'BLE MR JUSTICE AKIL KURESHI**

**Date : 07/07/2005**

**ORAL JUDGMENT**

In the present petition, the petitioner has challenged the orders passed by the Mamlatdar & ALT, Ahmedabad on 29th March 1994, by the Deputy Collector on 26th April 1995 and by the Gujarat Revenue Tribunal on 15th February 1999.

2. The petitioner had purchased certain agricultural lands in Vejalpur in the year 1984 by two separate sale deeds. Mutation entries in this regard were effected on 10.5.89. However, on the objection of the original seller, proceedings were undertaken by the Mamlatdar. During the pendency of these proceedings, the Mamlatdar and ALT issued a notice to the petitioner under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter to be referred to as "the Tenancy Act"). This notice was issued by the Mamlatdar on account of the order passed by the Deputy Collector on 11.2.92. It is thus clear that the notice under section 84C of the Tenancy Act came to be issued some time thereafter in the year 1992. By order dated 29th March 1994, the Mamlatdar and ALT, Ahmedabad was pleased to hold that the sale transactions of the lands in question were opposed to the provisions of section 63 of the Tenancy Act. He, therefore, ordered that the land be put in the original condition. The order of the Mamlatdar was challenged unsuccessfully by the petitioner before the Deputy Collector as well as before the Gujarat Revenue Tribunal. The orders passed by the authorities below are, therefore, challenged by the petitioner in the present proceedings.

3. Learned counsel for the petitioner, though contended that the petitioner was an agriculturist and possessed agricultural lands in village Anganaj, in view of the retrospective operation of the amendment in section 2(6) of the Tenancy Act, the sale transaction would not be hit by the provisions of section 63 of the Act, this contention was not seriously pressed in view of the fact that there is factual dispute about the petitioner holding agricultural lands in village Anganaj.

4. Learned advocate for the petitioner, however, submitted that even otherwise, the orders passed by the authorities below cannot be sustained. He submitted that the sale transactions had taken place in the year 1984 of which the authorities were duly communicated since the petitioner had himself applied for mutation entries in the revenue records and initiation of the proceedings under section 84C of the Tenancy Act was done in the year 1992. He, therefore, submitted that the initiation of the proceedings under section 84C of the Tenancy Act was grossly belated and cannot be sustained. In support of his contention, reliance is placed on an order passed by the Hon'ble Supreme Court on 27th August 1996 in Civil Appeal No.4917 of 1994 in the case of Dajibhai Kanjibhai Janda v. The Mamlatdar & Agricultural Lands Tribunal,

Pardi and another. Reliance was also placed on a Division Bench decision of this Court in the case of Valjibhai Jagjivanbhai v. State of Gujarat, 2005 (2) GLH 34 and also on the decision of a Division Bench of this Court in the case of Guj. Khet Kamdar Union v. State, 1999(3) GLR 2044 to contend that proceedings under section 84C cannot be initiated after an unreasonable period of time.

5. In the present case, the sale transactions which were found to be opposed to the provisions of section 63 of the Tenancy Act had taken place in the year 1984. The proceedings for the mutation entries were undertaken shortly thereafter. The fact of sale, therefore, came on record before the revenue authorities shortly after the sale transactions. In fact, entries were actually made in the year 1989. The original seller objected to these entries and therefore proceedings were initiated by the Mamlatdar. Thus at all point of time, the Mamlatdar was aware about the sale transactions. However, notice under section 84C of the Tenancy Act came to be issued for the first time in the year 1992 i.e. eight long years after the sale transaction. In the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in the case of Dajibhai Kanjibhai Jandal

(supra), the Hon'ble Supreme Court found that the power vested under section 84C of the Tenancy Act to invalidate the transfer of land in contravention of section 63 of the Tenancy Act cannot be exercised at any point of time and such powers have to be exercised within a reasonable time. A Division Bench of this Court in the case of Valjibhai Jagjivanbhai (supra) also held in context of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act that the transactions which is opposed to the provisions of the said Act have to be invalidated by exercise of powers within a reasonable period of time and such powers cannot be exercised after inordinate delay. In the Division Bench decision of this Court in the case of Gujarat Khet Kamdar Union (supra), also in context of the powers under section 84C of the Tenancy Act, the Bench observed that though the section does not lay down any period of limitation, power must be exercised within a reasonable time and what is reasonable time cannot be defined in straight-jacket formula.

6. Coming to the facts of the present case, as noted earlier, the sale transactions had taken place in the year 1984 which were made known to the authorities shortly thereafter and the notice under section 84C of the Tenancy Act came to be issued only in the year 1992. It is not

even the case of the Government that there was any misrepresentation or fraud on the part of the petitioner or concealment of the sale transactions. Exercise of powers under section 84C of the Tenancy Act after eight long years therefore was not justified.

7. In view of the above discussion, the orders impugned in the present petition passed by the authorities below at Annexures C, D & E are quashed and set aside. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

(vjn)